

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No.
v.)	
)	Title 18, United States Code,
SCOTT K. TOBERMAN)	Sections 1341, 1343, and 2

COUNT ONE

The SPECIAL AUGUST 2006 GRAND JURY charges:

1. At times material to this indictment:

Defendant's ownership of EAR and relationship to the EAR-managed Properties

a. European American Realty, Ltd. ("EAR"), was an Illinois corporation, with its principal places of business in Chicago, Illinois, and Atlanta, Georgia. Defendant TOBERMAN was the owner and President of EAR.

b. The principal business of EAR was acting as the property manager for a number of commercial buildings located in various cities, such as the following:

- i. 11 S. LaSalle, 11 S. LaSalle Street, Chicago, Illinois.
- ii. 250 Wacker, 250 S. Wacker Drive, Chicago, Illinois.
- iii. Brookfield Commons, 6600 W. Broad Street, Richmond, Virginia.
- iv. Crescent Centre, 1000 Crescent Centre Parkway, Tucker, Georgia
- v. Dayton Centre, One South Main Street Dayton, Ohio.
- vi. Gage Building, 18-28 S. Michigan Avenue, Chicago, Illinois.
- vii. Gwinnett Business Center, 2255/2351 Button Gwinnett Drive, Doraville, Georgia.

- viii. Northside, 1570 Northside Drive, Atlanta, Georgia.
- ix. Park Central, 2970 Clairmont Road, Atlanta, Georgia.
- x. Riverwood 100, 3350 Riverwood Parkway in Atlanta, Georgia
- xi. Westlake, 700-800 Westlake Parkway in Atlanta, Georgia

(Collectively, the “EAR-managed Properties.”)

c. The EAR-managed Properties were owned (wholly or in substantial part) by a number of limited partnerships and associated limited liability corporations, as further identified below:

11 S. LaSalle	Mouton Limited Partnership, an Illinois limited partnership (“Mouton LP”), which was a limited partner of Eleven South LaSalle Associates, LLC, a Delaware limited liability company
250 Wacker	250 Wacker Limited Partnership, an Illinois limited partnership (“250 Wacker LP”), which was a limited partner of South Wacker Drive Investors, LLC, a Delaware limited liability company
Brookfield Commons	Chambertin Limited Partnership, a Virginia limited partnership (“Chambertin LP”)
Crescent Centre	Corton Limited Partnership, a Georgia limited partnership (“Corton LP”), which was a limited partner of Crescent Centre Associates LP, a Delaware limited partnership
Dayton Centre	Ducru Limited Partnership, an Ohio limited partnership (“Ducru LP”), which was a member of Ducru SPE, LLC, a Delaware limited liability company
Gage Building	Michigan Avenue Associates Limited Partnership, an Illinois limited partnership (“Michigan Avenue LP”), which was a limited partner of Longstreet Partners, LLC, a Delaware limited liability company
Gwinnett Business Center	Leoville Limited Partnership, a Delaware limited partnership (“Leoville LP”)
Northside	Lafite Limited Partnership, a Georgia limited partnership (“Lafite LP”)

Park Central	Echézeaux Limited Partnership, a Georgia limited partnership (“Echézeaux LP”), which was a limited partner of Park Central Atlanta Associates, LLC, a Delaware limited liability company
Riverwood 100	Cheval Limited Partnership, a Georgia limited partnership (“Cheval LP”)
Westlake	Larose Limited Partnership, a Delaware limited partnership (“Larose LP”)

(Collectively, the “Owners” of the EAR-managed Properties.) Victim 1 was a limited partner in all of the limited partnerships identified above. In most instances, defendant and/or EAR also had a small ownership interest in the limited partners identified above.

d. Defendant SCOTT K. TOBERMAN, in his capacity as President of EAR, entered into Property Management Agreements with the Owners of the EAR-managed Properties in which defendant agreed in substance to: (i) use commercially reasonable efforts to manage the day-to-day affairs of the EAR-managed Properties; (ii) collect rent from tenants and other funds generated by, or owing to, the Owners of the EAR-managed Properties; (iii) deposit such collected funds on behalf of the Owners of the EAR-managed Properties into specified financial accounts (the “Property Accounts”), (iv) use the collected funds only for purposes specified in the Property Management Agreements, and (v) maintain truthful and accurate books and records relating to the income, expenses, and operations of the EAR-managed Properties.

e. In each of the Property Management Agreements, the Owners of

the EAR-managed Properties agreed to pay EAR a management fee. In general, the management fee consisted of a fixed percentage of either gross revenue, gross collected rent, or gross receipts, paid on a monthly basis to EAR. In addition, in each of the Property Management Agreements, defendant agreed not to commingle his own funds or funds owned by EAR with funds collected pursuant to his duties under the Property Management Agreements.

f. It was the general practice of defendant SCOTT K. TOBERMAN to establish separate corporate affiliates of EAR, owned and controlled by defendant, for the buildings that EAR had agreed to act as property manager (the “EAR-related Entities”). The EAR-related Entities were named as General Partners of the respective limited partnerships in order to facilitate their management of the EAR-managed Properties, as more specifically described below:

EAR-related Entity	General Partner of	EAR-managed Property
EAR Clairmont, Inc.	Echézeaux LP	Park Central, Atlanta, GA
EAR Crescent LLC	Corton LP	Crescent Centre, Tucker, GA
EAR Dayton, Inc.	Ducru LP	Dayton Centre, Dayton, OH
EAR Gage, Inc.	250 Wacker LP Michigan Avenue LP	250 Wacker, Chicago, IL Gage Building, Chicago, IL
EAR Georgia, Inc.	Cheval LP	Riverwood 100, Atlanta, GA
EAR Larose, Inc.	Larose LP	Westlake, Atlanta, GA
EAR LaSalle, Inc.	Mouton LP	11 S. LaSalle, Chicago, IL
EAR Leoville, Inc.	Leoville LP	Gwinnett Business Ctr., Doraville, GA
EAR Northside, Inc.	Lafite LP	Northside, Atlanta, GA
EAR Richmond, Inc.	Chambertin LP	Brookfield Commons, Richmond, VA

In many instances, defendant established bank accounts in the name of these EAR-related Entities in order to conduct their financial affairs (the “EAR operating accounts”).

Defendant’s Business Ventures Unrelated to the EAR-managed Properties

g. Defendant SCOTT K. TOBERMAN possessed an interest in a number of partnerships and real estate-related enterprises independent of the EAR-managed Properties, such as the following:

- i. Batard Partners, LLC, a Georgia limited liability company, owner in substantial part of the Paces View condominium development project, Atlanta, Georgia.
- ii. Charlemagne Partners, LLC, a Delaware limited liability company.
- iii. Esplendido Partners, LLC, a Georgia limited liability company.
- iv. Montrachet Partners, LLC, a Georgia limited liability company.

Defendant maintained and controlled bank accounts in the names of these entities at various financial institutions.

h. In or about 1999, defendant SCOTT K. TOBERMAN engaged the services of Company A, a project management and construction services consulting firm, and Company B, an architectural design and engineering firm, to assist in him in the development of an office tower to be located at 7 South Dearborn Street, Chicago, Illinois (the “7 South Dearborn Project”). Although the 7 South Dearborn Project was never completed, defendant incurred a substantial debt to Company A and Company B as a result of services provided to defendant in

connection with the project. Defendant paid funds that he owed to Company A and Company B for work performed on the 7 South Dearborn Project at various times between 2001 and 2002.

i. Efforts to develop the 7 South Dearborn Project were the subject of litigation, and defendant SCOTT K. TOBERMAN was a party in such litigation. Defendant was represented in this litigation by various law firms, including Law Firm 1, and defendant incurred substantial debt to Law Firm 1 as a result of its work on matters related to the 7 South Dearborn Project litigation. At various times between 2001 and 2003, defendant paid funds that he owed to Law Firm 1 for their representation in matters relating to the 7 South Dearborn Project litigation.

j. Excluding defendant SCOTT K. TOBERMAN, the Owners of the EAR-managed Properties had no ownership or other equity interest in the 7 South Dearborn Project, Batard Partners, Charlemagne Partners, Esplendido Partners, or Montrachet Partners.

2. Beginning no later than July 2001, and continuing to at least March 2005, in the Northern District of Illinois, Eastern Division, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, devised and participated in a scheme to defraud Victim 1 and other Owners of the EAR-managed Properties, and to obtain funds by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described below.

3. It was part of the scheme that defendant SCOTT K. TOBERMAN, through his position as President of EAR, obtained access to funds owned by the Owners and tenants of the EAR-managed Properties and fraudulently converted approximately \$3,000,000 of such funds to his own benefit.

4. It was further part of the scheme that defendant SCOTT K. TOBERMAN falsely and fraudulently represented to the Owners of the EAR-managed Properties that EAR would faithfully collect rents and other funds owing to the Owners of the EAR-managed Properties on their behalf, cause those funds to be deposited into the Property Accounts, and distribute and spend such funds only as authorized under the terms of the Property Management Agreements. In truth, as defendant well knew at the time that he made these false and fraudulent representations, defendant intended to divert a substantial portion of funds that he collected on behalf of the Owners of the EAR-managed Properties in order to use such funds for defendant's personal benefit.

5. It was further part of the scheme that defendant SCOTT K. TOBERMAN knowingly diverted payments made to the Owners of the EAR-managed Properties, or to the tenants of those properties, to bank accounts controlled by defendant where he converted the funds to his own benefit, such as the following:

a. On or about August 1, 2001, defendant caused a check issued by Law Firm MG payable to Michigan Avenue Associates in the amount of

approximately \$87,804 to be deposited into an Esplendido Partners account at First Union Bank, where defendant converted the funds to his own benefit.

b. On or about May 30, 2002, defendant caused a check issued by Confederation Life Insurance payable to Wacker Drive Associates in the amount of approximately \$34,792 (Canadian) to be deposited into an Esplendido Partners account at First Union Bank, where defendant converted the funds to his own benefit.

c. On or about July 11, 2002, and September 25, 2002, defendant caused funds in the amount of approximately \$75,000 belonging to the Chambertin LP to be wire transferred by the Artery Capital Group to an EAR operating account at Citibank, where defendant converted the funds to his own benefit; for example, by paying approximately \$50,000 owed by defendant to Company B for services performed on the 7 South Dearborn Project.

d. On or about August 12, 2002, defendant SCOTT K. TOBERMAN caused funds in the amount of approximately \$100,000 belonging to the Leoville LP to be wire transferred to a Charlemagne Partners account at Citibank, where defendant converted the funds to his own benefit; for example, by paying \$100,000 owed by defendant to Company B for services performed on the 7 South Dearborn Project.

e. On or about October 21, 2002, defendant SCOTT K. TOBERMAN caused funds in the amount of approximately \$450,000 belonging to the Chambertin LP to be wire transferred to an EAR operating account at Citibank,

where defendant converted the funds to his own benefit; for example, by paying \$115,781 owed by defendant to Company A for services performed on the 7 South Dearborn Project.

f. On or about December 9, 2002, defendant caused a check issued by Law Firm MG payable to Wacker Drive Associates in the amount of approximately \$154,415 to be deposited into a Charlemagne Partners account at Citibank, where defendant converted the funds to his own benefit.

g. On or about December 31, 2002, defendant caused a check issued by Confederation Life Insurance payable to Wacker Drive Associates in the amount of approximately \$55,446 (Canadian) to be deposited into a Charlemagne Partners account at Citibank, where defendant converted the funds to his own benefit.

h. On or about December 31, 2002, defendant caused a check issued by Confederation Life Insurance payable to Wacker Drive Associates in the amount of approximately \$12,673 to be deposited into a Charlemagne Partners account at Citibank, where defendant converted the funds to his own benefit.

i. On or about June 30, 2003, defendant obtained funds from a check issued by Law Firm MG in the amount of \$169,164 to be deposited into an EAR operating account at Colonial Bank, where defendant converted the funds to his own benefit.

j. On or about August 13, 2004, defendant SCOTT K. TOBERMAN caused a check issued by Clear Channel Worldwide payable to Ducru LP in the

amount of approximately \$83,117 to be deposited into a Montrachet Partners account at Colonial Bank, where defendant converted the funds to his own benefit.

k. On or about August 13, 2004, defendant SCOTT K. TOBERMAN caused a check issued by the Building Owners and Managers Association of Chicago payable to 11 S. LaSalle Associates to be deposited into an EAR operating account at Citibank, where defendant converted the funds to his own benefit; for example, by purchasing a 19-foot JC Neptune pontoon boat.

6. It was further part of the scheme that defendant SCOTT K. TOBERMAN fraudulently used funds on deposit in the Property Accounts to purchase antiques, wine, and other goods and services for his personal benefit, such as the following:

a. On or about May 23, 2000, defendant SCOTT K. TOBERMAN caused a check in the amount of approximately \$ 18,100 to be issued from a Cheval LP Property Account to pay for fine wine that he purchased from a vendor in Chicago, Illinois.

b. On or about December 12, 2000, defendant SCOTT K. TOBERMAN caused a check in the amount of approximately \$9,000 to be issued from a Cheval LP Property Account and used the check to pay for fine wine that he purchased from a vendor in Atlanta, Georgia.

c. On or about February 28, 2002, defendant SCOTT K. TOBERMAN caused approximately \$13,500 to be withdrawn from a Larose LP

Property Account and used the funds to pay defendant's tuition at Harvard University.

d. On or about December 30, 2004, defendant SCOTT K. TOBERMAN caused approximately \$50,000 to be transferred from a Larose LP Property Account to a Montrachet Partners account, which defendant used on or about January 21, 2005, to pay a general contractor in Atlanta working on one of defendant's personal residences.

7. It was further part of the scheme that defendant SCOTT K. TOBERMAN fraudulently used funds belonging to the Owners of the EAR-managed Properties to pay the expenses of his own unrelated business ventures, such as the following:

a. On or about November 2, 2001, defendant SCOTT K. TOBERMAN caused approximately \$40,000 to be wire transferred from a Chambertin LP Property Account to pay Company A for services performed on the 7 South Dearborn Project.

b. On or about November 2, 2001, defendant SCOTT K. TOBERMAN caused approximately \$75,000 to be wire transferred from a Lafite LP Property Account to pay Company A for services performed on the 7 South Dearborn Project.

c. On or about May 1, 2002, defendant SCOTT K. TOBERMAN caused approximately \$130,468 to be wire transferred from a Ducru LP Property Account to pay Company A for services performed on the 7 South Dearborn Project.

d. On or about September 15, 2004, defendant SCOTT K. TOBERMAN caused approximately \$280,327 to be wire transferred from Property Accounts belonging to the Crescent LP, Echézéaux LP, Larose LP, and Leoville LP to a Batard Partners account at Colonial Bank, which defendant used to pay properties taxes to Fulton County, Georgia, relating to the Paces View condominium project.

8. It was further part of the scheme that defendant SCOTT K. TOBERMAN knowingly used funds belonging to the owners of the EAR-managed Properties to pay legal fees totaling more than \$370,000 owed by defendant to firms that had represented defendant or EAR on matters unrelated to management of the EAR-managed Properties, such as the following:

a. On or about December 30, 2002, defendant caused a \$75,000 check to be issued from a Ducru LP Property Account, which he used to pay legal fees owed by defendant to Law Firm 1 related to the 7 South Dearborn Project.

b. On or about December 30, 2002, defendant caused a \$25,000 check to be issued from a Lafite LP Property Account, which he used to pay legal fees owed by defendant to Law Firm 1 related to the 7 South Dearborn Project.

9. It was further part of the scheme that defendant SCOTT K. TOBERMAN misapplied and converted security deposits of tenants in the EAR-managed Properties to his own use and benefit.

10. It was further part of the scheme that defendant SCOTT K. TOBERMAN, in order to conceal his unlawful misapplication and conversion of

tenant security deposits, replenished the depleted bank accounts with funds unlawfully transferred from the Property Accounts of unrelated EAR-managed Properties, such as the following:

a. On or about December 8, 2004, defendant caused \$116,000 to be wire transferred from a Ducru LP Property Account to a Bank of America account in order to replace security deposit funds taken by defendant from tenants of the 250 Wacker building.

11. It was further part of the scheme that defendant SCOTT K. TOBERMAN concealed and attempted to conceal his theft of funds from the Owners of the EAR-managed Properties by creating, and causing others to create, intentionally false and misleading entries in the books and records of the EAR-managed Properties.

12. It was further part of the scheme that defendant SCOTT K. TOBERMAN concealed and attempted to conceal his theft of funds from the Owners of the EAR-managed Properties by fraudulently creating, and causing others to create, intentionally false and misleading financial reports, and caused those false and misleading reports to be distributed to the Owners of the EAR-managed Properties.

13. It was further part of the scheme that defendant SCOTT K. TOBERMAN concealed and attempted to conceal his theft of funds from the Owners of the EAR-managed Properties by fraudulently creating, and causing others to create, falsified and fabricated invoices and other records which purported to

document payment of expenses related to management of the EAR-managed Properties, such as the following:

a. In or about July 2004, defendant caused EAR employee A to prepare a fabricated invoice and wire transfer instruction which purported to document payment of \$62,500 from a Ducru LP Account to Company AC for work performed at the Dayton Centre. In truth and fact, as defendant well knew, no such work had been performed. Rather, defendant had caused the funds to be transferred in November 2001 from the Ducru LP Account to an EAR operating account at Citibank, where he converted the funds to his own benefit.

b. In or about July 2004, defendant caused EAR employee A to prepare a fabricated invoice and wire transfer instruction which purported to document payment of \$130,468.75 from a Ducru LP Account to Company AC for work performed at the Dayton Centre. In truth and fact, as defendant well knew, no such work had been performed. Rather, defendant had caused the funds to be wire transferred in May 2002 from the Ducru LP Account to Company A to pay for services performed on the 7 South Dearborn Project.

c. In or about July 2004, defendant caused EAR employee A to prepare a fabricated invoice and wire transfer instruction which purported to document a payment of \$100,000 from a Ducru LP Account to Company GC for work performed at Dayton Centre. In truth and fact, as defendant well knew, no such work had been performed. Rather, defendant had transferred the funds in

July 2003 from the Ducru LP Account to an EAR operating account at Citibank, where he converted the funds to his own benefit.

14. It was further part of the scheme that defendant SCOTT K. TOBERMAN concealed and attempted to conceal his theft of funds by forbidding EAR employees to discuss financial matters relating to the EAR-managed Properties with Victim 1 and other Owners without defendant's advance knowledge and permission.

15. It was further part of the scheme that defendant SCOTT K. TOBERMAN concealed, misrepresented, and hid and caused to be concealed, misrepresented, and hidden, the existence and purpose of the scheme and the acts done in furtherance of the scheme.

16. On or about May 1, 2002, in the Northern District of Illinois, Eastern Division, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, knowingly caused to be transmitted in interstate commerce from Ohio, to Chicago, Illinois, certain writings, signs, signals, and sounds, namely a wire transfer of approximately \$130,468.75 from a Ducru LP account at Bank One, Ohio, to an account at LaSalle Bank, Chicago, Illinois, owned by Company A;

In violation of Title 18, United States Code, Sections 1343.

COUNT TWO

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about July 9, 2002, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, knowingly caused to be transmitted in interstate commerce from Maryland, to Chicago, Illinois, certain writings, signs, signals, and sounds, namely a wire transfer of approximately \$60,000 from an account at Sandy Springs Bank in Maryland, to a EAR operating account at Citibank, Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1343.

COUNT THREE

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about August 12, 2002, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, knowingly caused to be transmitted in interstate commerce from Georgia, to Chicago, Illinois, certain writings, signs, signals, and sounds, namely a wire transfer of approximately \$100,000 from a Leoville LP account at Colonial Bank, Georgia, to a Charlemagne Partners account at Citibank, Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1343.

COUNT FOUR

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about October 21, 2002, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, knowingly caused to be transmitted in interstate commerce from North Carolina, to Chicago, Illinois, certain writings, signs, signals, and sounds, namely a wire transfer of approximately \$450,000 from an account at First Union Bank, North Carolina, to an EAR operating account at Citibank, Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1343.

COUNT FIVE

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.
2. On or about December 3, 2002, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be deposited with FedEx, an interstate commercial carrier, and sent according to the directions thereon, a package from Law Firm 2 in Chicago, Illinois, addressed to EAR in Atlanta, Georgia, which package contained a check from Confederation Life Insurance payable to Wacker Drive Associates in the amount of \$55,446.72 (Canadian funds);

In violation of Title 18, United States Code, Sections 1341.

COUNT SIX

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about December 5, 2002, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be deposited with FedEx, an interstate commercial carrier, and sent according to the directions thereon, a package from Law Firm MG in Chicago, Illinois, addressed to EAR in Atlanta, Georgia, which package contained a check from Law Firm MG payable to Wacker Drive Associates in the amount of \$154,415.51;

In violation of Title 18, United States Code, Sections 1341.

COUNT SEVEN

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about December 24, 2002, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be deposited with FedEx, an interstate commercial carrier, and sent according to the directions thereon, a package from Law Firm 2 in Chicago, Illinois, addressed to EAR in Atlanta, Georgia, which package contained a check from Confederation Life Insurance payable to Wacker Drive Associates in the amount of \$12,673.54 (Canadian funds);

In violation of Title 18, United States Code, Sections 1341.

COUNT EIGHT

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about January 8, 2003, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by an interstate commercial carrier, namely FedEx, according to the directions thereon, a package from EAR in Atlanta, Georgia, addressed to EAR in Chicago, Illinois, which package contained two checks from Law Firm MG, one payable to Wacker Drive Associates in the amount of \$69,065.65, the other payable to Michigan Avenue Associates in the amount of \$17,900.00;

In violation of Title 18, United States Code, Sections 1341.

COUNT NINE

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about April 7, 2003, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, knowingly caused to be transmitted in interstate commerce from Chicago, Illinois, to Georgia, certain writings, signs, signals, and sounds, namely a wire transfer of approximately \$875,185.18 from a Chicago Title & Trust Company account at LaSalle Bank, Chicago, Illinois, to defendant's personal bank account at First Union Bank, Atlanta, Georgia;

In violation of Title 18, United States Code, Sections 1343.

COUNT TEN

The SPECIAL AUGUST 2006 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1 - 15 of Count One of this indictment.

2. On or about December 8, 2004, at Chicago, in the Northern District of Illinois, and elsewhere,

SCOTT K. TOBERMAN,

defendant herein, for the purpose of executing the scheme to defraud, knowingly caused to be transmitted in interstate commerce from Chicago, Illinois, to Georgia, certain writings, signs, signals, and sounds, namely an email from an EAR employee in Chicago, Illinois, to an EAR employee in Atlanta, Georgia, containing instructions to wire transfer \$116,000 from a Ducru LP Account to a Bank of America account relating to the 250 Wacker building;

In violation of Title 18, United States Code, Sections 1343.

F O R E P E R S O N

UNITED STATES ATTORNEY